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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,959	07/17/2003	Milton Silva-Craig	15-IS-5715 (13035US02)	2022
23446 7590 09/25/2007 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			EXAMINER CAO, PHUONG THAO	
			ART UNIT 2164	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/621,959

**Applicant(s)**

SILVA-CRAIG ET AL.

**Examiner**

Phuong-Thao Cao

**Art Unit**

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37-42, 53, 54 and 57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-42, 53, 54 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to Amendment filed on 6/26/2007.
2. Claim 37 has been amended, claims 43-52 have been cancelled, and claims 1-36 and 55-56 were previously cancelled. Currently, claims 37-42, 53, 54 and 57 are pending.

#### ***Response to Amendment***

3. Claims 43-52 have been cancelled per the Examiner's restriction requirement. Accordingly, the listing of claims should list the status of claims 43-52 as "cancelled". The listing of claims in the amendment filed on 6/26/2007 does not list the status of claims 44-52. Appropriate correction is required in later amendment submissions.

#### ***Response to Arguments***

4. Applicant's arguments filed on 6/26/2007 have been fully considered but they are not persuasive.

Regarding Applicant's argument that Cluff et al. does not relate to, teach or suggest use in a medical system with medical data, Examiner disagrees. Using "in a clinical system including..." as recited in the preamble of a method claim is interpreted as "intended uses" which have no patentable weight and do not need to be demonstrated in the art. In addition,

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medical system is broadly interpreted as a data system and medical data is broadly interpreted as data.

Regarding Applicant's argument that Cluff et al. does not teach a status monitor, Examiner disagrees. According to the Specification, a status monitor is interpreted as software codes which perform a set of functions as claimed. Therefore, if the reference teaches functions which are claimed as using the status monitor, the reference teaches some software codes equivalent to the claimed status monitor.

Regarding Applicant's arguments that the file system arbitration of Vahalia et al. does not teach or suggest arbitration for restoration of data from a data source nor use of a status monitor for arbitrating access to medical data among multiple data requests, that Vahalia et al. fails to teach or suggest the status monitor and any sort of error detection and restoration, these arguments are invalid. Vahalia et al. is combined for the teaching of a function of arbitrating access among multiple data request (see Vahalia et al., [column 35, lines 25-30]).

Regarding Applicant's argument that the combination of Cluff et al. and Vahalia et al. fails to teach or suggest the claimed monitor status, Examiner disagrees. In view of the Specification, a status monitor is interpreted as software codes which perform a set of functions as claimed. Therefore, if the combination of references teaches all functions which are claimed as using the status monitor, the references teach some software codes equivalent to the claimed status monitor.

Regarding Applicant's argument that Levi et al. does not teach or suggest elements of at least claim 37, this argument is invalid. Elements of claim 37 are taught by the combination of Cluff and Vahalia. Levi et al. is combined for its teaching of the function of verifying the transferring of data (see Levi et al., [column 11, lines 35-45 and 55-65]).

Regarding Applicant's argument that Jamroga et al. does not teach or suggest arbitrating access to medical data among multiple data requests nor a status monitor, this argument is invalid. Jamroga et al. is combined for its teaching of function of authenticating access to the remote data store (see Jamroga et al., [column 13, 1-5]).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 37-39, 42, 53, 54 and 57 (effective filing date 4/13/2001) are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluff et al. (US Patent 7,089,449, effective filing date 11/6/2000) in view of Vahalia et al. (US Patent 6,973,455, effective filing date 3/3/1999).

As to claim 37, Cluff et al. teaches:

“A method for restoring data to a data source from a remote data store in a clinical system including said data source having medical data, said remote data store having medical data, and a status monitor” (see Cluff et al., Abstract), said method comprising:

“detecting an error in accessed data using said status monitor, wherein said status monitor is adapted to monitor operations occurring at said data source” (see Cluff et al., [column 4, lines 20-30] wherein a node is a data source and function of the operating system to detect a fault is equivalent to a function of Applicant’s “status monitor”);

“transferring a copy of said data from a remote data store to said data source based on a trigger, wherein said trigger is produced by said status monitor when said error is detected” (see Cluff et al., [column 2, lines 25-40 and 50-67], [column 4, lines 30-55] and Fig. 1) wherein remote backup system is equivalent to Applicant’s “remote data store”);

“restoring said data by replacing said data at said data store with said copy of said data” (see Cluff et al., [column 2, lines 25-41] and [column 4, lines 50-57]).

However, Cluff et al. does not teach data as specifically as medical data.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Cluff et al. to handle medical data since medical data is a type of data and the recoverability of data is even more important in medical field wherein the correctness and entirety of medical data plays a significant role in diagnosis and treatment.

Cluff et al. as modified does not teach “arbitrating access to said medical data among multiple data requests”.

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Vahalia et al. teaches arbitrating data access requests (see Vahalia et al., [column 35, lines 25-30]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teaching of Vahalia et al to the Cluff et al.'s system. Skilled artisan would have been motivated to do so to add the feature of arbitrating access to said medical data among multiple data requests in order to allow the system to effectively control data access and process more effectively multiple requests.

As to claim 38, this claim is rejected based on arguments given above for rejected claim 37 and similarly rejected including the following:

Cluff et al. and Vahalia et al. teach:

“obtaining said medical data at said data source and storing said medical data at said remote data source” (see Cluff et al., Fig. 1 and [column 2, lines 41] where a node is a data source and the backup storage system is equivalent to Applicant's “remote data source”).

As to claim 39, this claim is rejected based on arguments given above for rejected claim 37 and similarly rejected including the following:

Cluff et al. and Vahalia et al. teach:

“copying said medical data to a second data source” (see Cluff et al., [column 2, lines 25-41] and Fig. 1 wherein item 20 (or Node 14) in the backup storage system is equivalent to Applicant's “second data source”; also see [column 4, lines 50-55]).

As to claim 42, this claim is rejected based on arguments given above for rejected claim 37 and similarly rejected including the following:

Cluff et al. and Vahalia et al. teach:

“transferring said medical data from a directory representative of said data source at said remote data store to said data source” (see Cluff et al., [column 2, lines 30-42] and Fig 1 wherein node (item 14) is a data source, the backup storage system is a remote data store, and Note 14 (item 30) in the backup storage system (item 20) is equivalent to a directory representative of data source as illustrative in Applicant’s claim language).

As to claim 53, Cluff et al. teaches:

“A remote data retrieval system” (see Cluff et al., Abstract), said system comprising:

“a centralized remote data store for storing data, the centralized remote data store storing data from a first data source” (see Cluff et al., Fig. 1 wherein each node in the network as well as items 30, 32 or 34 in the backup storage system is equivalent to Applicant’s “first data source” and the backup storage system is equivalent to Applicant’s “centralized remote data store”);

“a second data source providing data” (see Cluff et al., [column 2, lines 24-42] and Fig. 1 wherein any node in the network as well as items 30, 32 or 34 can be considered as a second data source); and

“a status monitor for controlling a transfer of the data from the centralized remote data store to the second data source, wherein the status monitor is adapted to detect an error in accessed medical data at the second data source, wherein the status monitor is adapted to trigger a restoration of data from the centralized remote data store to the second data source” (see Cluff



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et al., [column 2, lines 25-40 and 50-67], [column 4, lines 20-30] and Fig. 1] wherein a node is a data source and wherein remote backup system is equivalent to Applicant's "remote data store").

Cluff et al. does not teach data as specifically as medical data.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Cluff et al to handle medical data since medical data is a type of data and the recoverability of data is even more important in medical field wherein the correctness and entirety of medical data plays a significant role in diagnosis and treatment.

Cluff et al. as modified does not teach "wherein the status monitor is adapted to arbitrate access to the medical data among multiple data requests".

Vahalia et al. teaches arbitrating data access requests (see Vahalia et al., [column 35, lines 25-30]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teaching of Vahalia et al to the Cluff et al.'s system. Skilled artisan would have been motivated to do so to add the feature of arbitrating access to said medical data among multiple data requests in order to allow the system to effectively control data access and process more effectively multiple requests.

As to claim 54, this claim is rejected based on arguments given above for rejected claim 37 and similarly rejected including the following:

Cluff et al. and Vahalia et al. teach:

“wherein the first data source is equivalent to the second data source” (see Cluff et al., Fig. 1 wherein Node (item 14) is a first data source and Node 14 (item 30) in the backup storage system is a second data source; also see [column 2, lines 25-40]).

As to claim 57, this claim is rejected based on arguments given above for rejected claim 53 and similarly rejected including the following:

Cluff et al. and Vahalia et al. teach:

“wherein the centralized remote data store stores the medical data in a directory representative of the first data source” (see Cluff et al., [column 2, lines 30-42] and Fig 1 wherein the directory representative of the first data source is, for example, node 14 (item 30) in item 20).

7. Claim 40 (effective filing date 4/13/2001) is rejected under 35 U.S.C. 103(a) as being unpatentable over Cluff et al. (US Patent 7,089,449, effective filing date 11/6/2000) in view of Vahalia et al. (US Patent 6,973,455, effective filing date 3/3/1999), and further in view of Levi et al. (US Patent 6,804,778, effective filing date 8/2/1999).

As to claim 40, Cluff et al. and Vahalia et al. teach all limitations as recited in claim 37.

However, Cluff et al. and Vahalia et al. do not teach:

“verifying said transferring of medical data from said remote data store to said data source”.

On the other hand, Levi et al. teaches

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“verifying said transferring of medical data from said remote data store to said data source” (see Levi et al., [column 11, lines 34-45 and 55-65]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teaching of Levi et al. into Cluff et al. (as modified by Vahalia et al.)’s system. A skilled artisan would have been motivated to do so to add the feature of verifying said transferring of medical data from said remote data store to said data source in order to provide an effective way to control the validity and correctness of data during transmission between systems.

8. Claim 41 (effective filing date 4/13/2001) is rejected under 35 U.S.C. 103(a) as being unpatentable over Cluff et al. (US Patent 7,089,449, effective filing date 11/6/2000) in view of Vahalia et al. (US Patent 6,973,455, effective filing date 3/3/1999), and further in view of Jamroga et al. (US Patent No. 6,574,742 effective filing date 11/12/1999).

As to claim 41, Cluff et al. and Vahalia et al. teach all limitations as recited in claim 37.

However, Cluff et al. and Vahalia et al. do not teach:

“authenticating access to said remote data store”.

On the other hand, Jamroga et al. teaches:

“authenticating access to said remote data store” (see [column 13, lines 1-10]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teaching of Jamroga et al. into Cluff et al. (as modified by Vahalia et al.)’s system. A skilled artisan would have been motivated to do so to add the feature

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of authenticating access to said remote data store since this feature provides an effective way to control access to the system. As a result, the system is more secure.

*Conclusion*

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong-Thao Cao whose telephone number is (571) 272-2735. The examiner can normally be reached on 8:30 AM - 5:00 PM (Mon - Fri).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuong-Thao Cao  
Art Unit 2164  
August 31, 2007

  
**CHARLES RONES**  
**SUPERVISORY PATENT EXAMINER**